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**COMMISSION MEETING  
THURSDAY, SEPTEMBER 14, 2000  
DRAFT MINUTES**

**Chair McLaughlin** called the meeting to order at 1:30 p.m., at the WestCoast Wenatchee Center Hotel. She acknowledged the death of Fred Steiner and extended the Commission's condolences to his friends and family. Chair McLaughlin also announced that the next Commission meeting would not be in Silverdale as previously scheduled; it will be conducted at the DoubleTree Guest Suites and Inn at SouthCenter in Seattle. She introduced the following attendees:

**MEMBERS PRESENT:**

**LIZ McLAUGHLIN, CHAIRPERSON;  
COMMISSIONER CURTIS LUDWIG;  
COMMISSIONER and VICE CHAIR, GEORGE ORR;  
COMMISSIONER MARSHALL FORREST;  
COMMISSIONER ALAN PARKER; and  
SENATOR MARGARITA PRENTICE, Ex Officio Member**

**OTHERS PRESENT:**

**BEN BISHOP, Executive Director;  
ROBERT BERG, Deputy Director, Operations;  
ED FLEISHER, Deputy Director, Policy & Government Affairs;  
CALLY CASS-HEALY, Assistant Director, Field Operations;  
DERRY FRIES, Assistant Director, Licensing Operations;  
AMY PATJENS, Manager, Communications & Legal Dept.;  
JERRY ACKERMAN, Assistant Attorney General; and  
SHIRLEY CORBETT, Executive Assistant**

**1. NEW LICENSES, CHANGES, AND TRIBAL CERTIFICATIONS:**

**Commissioner Forrest** a motion seconded by **Commissioner Orr** to approve all the applications on pages 1-14 of the agenda packet. *Vote taken: the motion carried with five aye votes.*

**2. REVIEW OF FRIDAY'S AGENDA:**

**Amy Patjens**, Manager, Communications & Legal Department, addressed changes to Thursday's calendar, noting that Items #7 and #8 have been removed. She noted there are several rules on Friday's agenda. The first one deals with charitable organizations being able to own a commercial establishment. A nonprofit organization created a for-profit corporation and wanted to open a house-banked card room. There are two amendments with the rule that the commissioners may choose from. After the last meeting, Assistant Attorney General, Jerry Ackerman, suggested that some of the language from the statute be incorporated into the rule itself, resulting in the two amendments. Most of the discussions so far have focused on a

charitable organization creating a for-profit corporation and then opening up a card room. However, the rule filed at the last Commission meeting would have prevented a charitable organization from owning any type of interest in any gambling activity which could include pull-tabs. The question is whether it's the Commission's wish to prevent for example, a charitable organization from owning any interest in a restaurant which may, in fact, have a pull-tab license.

The surprise pull-tab game rule and reporting changes in management will also be on the agenda for discussion. Two sets of rules that implement legislation passed during last session appear on the agenda dealing with promotional contests of chance and credit union raffles. There are 14 rules up for discussion and possible filing relating to the Bingo Net Return Task Force. Two rules are up for discussion and possible filing dealing with marketing opportunities for pull-tabs, and house rules dealing with disclosure of prizes for Bingo games.

### **3. STAFF REPORTS:**

#### **Agency Request 2001 Legislation:**

**Amy Patjens**, Manager, Communications & Legal Department, summarized the legislation discussed last month versus the proposal before the Commission this month. Staff is asking the Commission to approve the proposal so staff may formally submit this as agency request legislation to the Governor's office. At the last meeting, Commission Ludwig had some concerns about the bill as it was proposed. He felt that cheating was serious and was something that should be a felony. Under the proposal there had been three different categories and there was a category of cheating that would have been a gross misdemeanor. He also had some concerns about the sentencing guidelines. The last related to the penalty degree in a scenario where one person may be involved in cheating taking a large amount of money from a card room or a tribal casino versus a scenario of a conspiracy where five or more people were working together to take the house for a smaller amount of money. After discussions with Jerry Ackerman, the revised proposal was submitted for consideration.

Current law combines the definition of cheating and the penalties into a single statute. Cheating is a gross misdemeanor regardless of the number of people involved. The proposal that was before the Commission last month had three different degrees of cheating. A person would have been guilty of cheating in the first degree if they had conspired with five or more people. It would also have been cheating in the first degree if the cheating was perpetrated by a licensee. The second degree for cheating would have been a Class C felony, and would have involved the conspiracy of fewer than five people. Cheating in the third degree was anything that hadn't been cheating in the first or second degree.

Under the proposed bill, an individual would be charged based on their level of involvement in a cheating scheme, instead of charging all individuals with a gross misdemeanor. Local prosecutors in Pierce County specifically suggested that the Gambling Commission seek this change in law. The revised bill is simpler. There are two degrees of cheating, both of which would be a felony. Cheating in the first degree would now involve cheating when there are two or more people. It would continue to be cheating in the first degree if it was cheating by someone who had some type of a license or permit from the Commission. Cheating in the second degree would be any type of a non conspiracy cheating where perhaps one is acting on his own. However, this would now be a felony instead of a gross misdemeanor. The proposed bill moves the definition of cheating into its own section. That's a change from the current law, but not a change from the proposal before the Commission last month. There is added language to rank the felonies of cheating one. Again, this is new from last year's legislation; however, it was added last year by the House Appropriations Committee. The ranking of the felonies is not a change from last month's proposal.

**Ms. Patjens** affirmed that she talked to the RGA, The Federation of Clubs and the Washington Charitable and Civic Gaming Association, and they all supported the revised proposal. This was also presented to the Washington Association of Sheriffs and Police Chiefs at their meeting in August. It was not endorsed at

their meeting because the proposal had not been formally endorsed by the Gambling Commission or by the Governor's Office. Because it is different than last year's proposal, they wanted to give it some more thought. They asked staff to submit the proposal again at their meeting on November 7<sup>th</sup> and seek formal support at that time. Staff believes there is support from the WASPC to elevate cheating to a felony. The potential downside is that there is no longer a gross misdemeanor classification.

**Commissioner Forrest** asked what type of sentence range there would be for a person who had committed cheating in the first degree and had no record, taking into consideration the sentencing grid. **Mr. Ackerman** said it is ranked as a four on the offense score with a whole laundry list of crimes including Arson II, Assault II, and Hit and Run. He suspected that someone with no prior record would probably look at something in the standard range of 3 to 9 months or 3 to 12 months. There would be mandatory jail time, but not more than a year within the standard range. It is ranked as a Class B felony -- if a judge found a reason to go outside the standard range, he could impose up to 10 years in prison and a \$20,000 fine which would be unlikely.

**Commissioner Forrest** believed the commissioners were getting excited about something that didn't seem so horrible when compared to other kinds of crimes, especially where there is use of force. **Mr. Ackerman** noted that right now with cheating ranked as a gross misdemeanor, a judge has absolute latitude to impose up to year in jail as it is, and putting a felony label on the defendant in this case carries some stigmas and other liabilities. Commissioner Forrest couldn't see why the Commission would be so anxious to make this a felony offense. Mr. Ackerman responded that in terms of the maximum likely incarceration for a first offender, it's probably still within the same range. **Commissioner Ludwig** responded to Commissioner Forrest comments, saying that part of his whole problem in this area is the sentencing format. Prosecutors have all of the discretion now and judges have very little -- if they had the old system, a lot of these debates wouldn't be necessary. Commissioner Forrest said he agreed with Commissioner Ludwig and affirmed that prosecutors have too much discretion and judges don't have enough.

**Chair McLaughlin** asked if anyone in the audience would like to address this issue. **Theresa Smith**, WCCGA, said their organization supports this legislative measure. **Gary Murray**, Wizards Casino and the RGA, affirmed the RGA's stance that they would encourage anything that keeps the industry clean and keeps a good reputation within the gaming industry. He affirmed they are against any outside infiltration or any illegal activity, and the tougher the laws, the more impression they give that we are tough on illegal activities.

**Commissioner Parker** asked staff to review the evidence that there's a problem which was the basis for their bringing this forward. **Ms. Patjens** responded that since house-banking started in 1992, (when the Tulalip's first opened their casino after the Indian Gaming Regulatory Act), there has been about five or six big conspiracy cases where dealers typically worked together with some customers to develop some type of a cheating scheme. Typically it was the dealer signaling to the players what his card was and then the player would know if they should take another card or what to do. There has been little success in prosecuting these cases. The instance that came up with the Pierce County Prosecutor involved a case where there had been thousands of dollars taken. The prosecutor said this was only a gross misdemeanor. **Ms. Patjens** said the option had been discussed about having the prosecutor pursue the case under the theft statute. The difficulty with that is that the amount of money that was taken must be proved. Oftentimes with card games, what you have is that the odds have been changed and it is very difficult to determine an exact amount of money involved. Ms. Patjens indicated this is a proactive bill. The agency has had instances of cheating and they've been substantial. However, staff are seeing more occurrences with the advent of house-banked card rooms, and they wanted to give the prosecutor some tools to work with other than having all of the cheating being at the gross misdemeanor level.

**Commissioner Ludwig** said he had some concerns last month, but he is now prepared to support this draft,

knowing that it will be well worked during the legislative session. **Commissioner Parker** said that he understands where staff is coming from in making this proposal. If the Commission is simply forwarding something to the Legislature so the process of taking testimony from all the different stakeholders who wish to engage in the process continues, then he sees things differently than if the Commission's action reflects that the Commission has made a determination that it's been proven this is needed. Commissioner Parker expressed discomfort with saying the Commission is going forward with the proposal to make another felony on the books when they are not acting upon the record that shows it's justified at this point. If however, that record is going to be made at the next step, then so be it.

**Ms. Patjens** said that staff would now be submitting this to the Governor's Office. There's a chance as well that the Governor's Office will review this legislation and say they notice things are different from last year, and there's a chance the Governor would not support the changes. If that were to occur, then legislation could come about the way legislation comes about all the time, where it gets issued in by another legislator.

**Mr. Ackerman** said he had talked to different parties with different perspectives on this problem. His understanding was that there is a perception conveyed to him through staff – and this is reflective of some of the comments they heard from some of the constituent groups -- there was a concern that they wanted to protect the integrity of the industry. They have no question about the fact that gaming in this state was on the up and up. That's one of the principal functions of criminal prosecutions that they were trying to get to take place. The resource issue always comes up as to what crimes can one prosecute. In many counties they don't prosecute low level drug crimes because they don't have the resources. Since the gambling criminal charges were misdemeanors and very difficult to prove because of the nature of those statutes, gambling cases frequently were not prosecuted. Prosecutors felt they had to decline them and move on to cases that were more serious or were more readily provable. This proposal was an attempt to satisfy a need to insure the integrity of the industry and also satisfy concerns that prosecutors had raised -- and an attempt to get them to devote the necessary resources to bring these cases forward where merited. In essence, the impetus was; 1) a need to ensure the integrity of the industry; and, 2) a need to make these cases more prosecutable for the prosecutor so that they would be brought forward in the first instance.

**Commissioner Forrest** said he didn't want to prolong this discussion unduly, but called attention to page 2 where it says "Cheating in the second degree would involve non-conspiracy cheating and would be the same as the previous cheating in the third degree, except it would be a felony." He noted all the Commission would be doing is taking something and creating one more felony with all the bad consequences. He didn't think that prosecutors should be induced to prosecute because it's a felony instead of misdemeanor. He believed it is poor policy to make it a felony and then trust the prosecutor to bargain it down, particularly when the consequences are so horrendous with felonies on one's record. Commissioner Forrest believed a gross misdemeanor is an adequate ranking. If it's an aggravated case, the District Court Judge can impose a very substantial penalty, though it will be a penalty for the crime; it won't have all these long term consequences.

**Commissioner Orr** said he is very sure that whatever the Commission suggests isn't going to be the end product, but he believed it was important that the Commission causes the debate by passing this to the Legislature as agency request legislation and noting that we think there's a problem, but we don't represent the whole state of Washington. Commissioner Orr supported the request and recommended pushing this request forward.

**Director Bishop** noted that after the changes from last month, he is a reluctant supporter himself. He definitely supported the need for a misdemeanor level. He noted that over the last several months we have had several cases of petty cheating. People are trying to cheat -- it's obvious -- they're trying to cap a bet or they're trying to change a card. Director Bishop didn't think these could ever be prosecuted as felonies, or that staff would even attempt to take many of them to the prosecutor. He personally believed that when there is a conspiracy, it should be a felony because that goes right to the integrity of the activity. Director

Bishop suggested holding the vote on this issue until tomorrow because he would like to further discuss this with staff and Mr. Ackerman.

**Commissioner Ludwig** stated that he agreed with Commissioner Forrest. He believed prosecutors should prosecute something because it's wrong and it should be prosecuted in and of itself – not because of a label the Legislature may ultimately put on it. Calling it a felony or a gross misdemeanor – it can be serious and wrong – it should be prosecuted. Commissioner Ludwig suggested that rather than boiling the three degrees down to felonies – maybe we could make it two separate crimes, one a gross misdemeanor, and the more serious offense a felony. **Director Bishop** said that's what he would like to explore. **Chair McLaughlin** decided to hold this over for Friday.

#### **Net Return Task Force Report:**

**Sherri Winslow**, Special Assistant, presented the final task force report, noting that after two years of meetings and discussions, there are findings and recommendations. The findings reveal a clear downturn in charitable gaming. Based on the analyses prepared, the marketplace for all gaming in Washington is continuing to grow at an increasingly competitive rate. The full fallout of this is still unknown. The task force was started in the Fall of 1998. Meetings were held just about every month through August of 2000. A Net Return Workshop was held in July to provide information on the gaming market, the history of net return and task force activities. An in-depth overview of the history of net return and prize pay-out was covered in July, and has been included in the report. It provides an overview of activities and Commission actions from 1973 to current. It includes several studies, task forces and some similar action to those they will see recommended at this meeting.

We are currently operating on a temporary moratorium and there are 29 organizations participating in this moratorium. It should remain in effect until new rules are passed and at that time, they will be recommending repeal of the moratorium rule. The goals of the task force were to project the gaming vision, study changes in the gaming markets, to revisit the net return rules and the significant progress rules, to streamline Bingo operational rules, assist with the development and new market opportunities, and to collaborate on the legislative agenda. All goals were met by the task force. It is anticipated that a few new rules may be forwarded on new market opportunities in the near future.

The written report covers topics that were major areas of interest for the task force. The historical background, the highlights of the task force, gaming changes in and around Washington, and the agency's regulatory program as it is today, and as it's proposed. **Ms. Winslow** covered the historical background task force highlights and touched on some of the changes. There are many items in the appendices of the report, including a comparison of Bingo activity from 1993 to 1999 showing there is a continual drop in income and expenses for Bingo licensees. There's statistical information obtained from task force members showing their declining activity in the appendices. Additional statistics were provided from the seven other jurisdictions.

The regulatory program includes monitoring the net return, providing licensee assistance, and monitoring significant progress. A meeting was held in August by Commission staff to discuss the proposed rules, the potential implementation of those rules and a regulatory program. The regulatory program for the new rules is very similar to what exists today; however, staff have clarified the duties and are working on communications to ensure that a good coordination of efforts exists with the new program. All these efforts should assist them in reaching the goals of the program and help licensees in achieving their net return. However, the Commission needs to stay aware of the ever-changing market and the impacts, and may need to revisit this area in the future based on these changes.

**Commissioner Forrest** asked if the increments were necessary. He thought three would be ample. **Ms.**

**Winslow** said she could only speak to what she heard from the different members of the task force that were represented from the licensee groups, and they felt that the varying levels were quite important because the economies of scale were different at the different levels. One of the points in the report talks about sanctions in the third year – somebody being out of compliance with the net return would be reduced to band level A. There was considerable concern over that because they felt that that would put them out of business. From the licensee's view there is a big difference at each band level. Commissioner Forrest asked if the casualties were going to continue with the new rates. Ms. Winslow said that question was addressed at today's task force meeting and she was been informed that a number of the licensees will be out of compliance in the latest report. She predicted that there is going to be a continual drop. The full impacts from the increases in commercial gaming establishments, the tribal lottery devices – all of these things impact the marketplace and we are seeing continual drops in the charitable market whether it's customer decline, age, or demographics. It's hard to pinpoint because one can't find a direct correlation on each of these impacts to the market.

**Commissioner Parker** asked if there would be a legislative package proposal and if Ms. Winslow had some sense if that would be a proposal she would be working on, and when the Commission may anticipate that. **Ms. Winslow** said there's a potential that the charitable group may come forward with a recommendation for electronic Bingo machines at the next legislative session and it will likely be sponsored by the WCCGA. **Commissioner Forrest** noted that if, or when that happens, it wouldn't change the structure of this proposal. Ms. Winslow agreed. Commissioner Forrest said the rules would still apply; it's just a different way of playing the game. Ms. Winslow agreed and said there would likely need to be additional rules. The agency would have operational rules which would basically improve the income to the organization and improve their ability to meet the net return that is recommended.

**Director Bishop** formally thanked Ms. Winslow, the members of the task force and the other licensees and staff who participated in this activity. He acknowledged this was a tough job because it is very hard to nail down answers. The issue gets back to what goes on in the market and whether the money from gambling should be used to benefit charities and nonprofit organizations. It appears these organizations have been on the bottom of the priority pole and their market is going away. The task force members have had to make some tough decisions -- they have concluded that the biggest impacts are controllable by the Bingo industry themselves. A lot of the rules are protective to keep them from being predators of each other. It is complicated, and there are a lot of levels -- there are economies of scale as one goes up. In the past the Commission has said that the small games are purely social because they didn't expect to make money. The large games are clearly fund raisers. It's the games in between that cause most of the regulatory problems. Director Bishop advised the dilemma remains of maintaining a regulatory environment that allows them to operate while at the same time protecting them enough so they can make a profit. Whether there are three levels or ten, it will be a tough situation. He thanked everyone for their hard work.

#### **4. GROUP IV – QUALIFICATION REVIEW:**

##### **Spokane Athletic Round Table, Spokane:**

**Bob Berg**, Deputy Director reported that this organization was formed in 1936 with the purpose to promote sports activities for underprivileged and handicapped children. They contribute to and help support current sports programs for colleges and universities in the Inland Empire. The organization also subsidizes specially-gifted athletes in need of financial assistance, promotes amateur athletics events, sponsors Spokane City and County Parks and Recreation activities and provides direct program services to various golf, football and baseball programs. Licensed since 1982, the organization has 16 active members who also serve as board members.

This organization provided civic and charitable services through cash contributions to sports programs for underprivileged and handicapped children and various other charitable and nonprofit organizations. For the year ending December 31, 1999, the organization did not meet the required combined net return percentage

of 12 percent for their Class J Bingo license; however, their net return of 7.5 percent was within the parameters as set forth in the net return moratorium. The year-to-date net return as of June 30<sup>th</sup> was 3.1 percent. They did not have excessive reserves at the end of the fiscal year ending December 31, 1999, and more than 60 percent of their gambling income was used to fund program services. Supporting service expenses were more than 20 percent of the non-functional expenses. As of August 24, 2000, there were no pending administrative charges against the organization.

**Mr. Berg** reported that based on staff's analysis of the financial statements, while the organization did make progress towards accomplishing their stated purpose, Spokane Athletic Round Table may not be qualified as a bona fide nonprofit organization for the purpose of conducting authorized gambling activities in the state of Washington. This is because their supporting services (overhead) exceeds the 20 percent limitation required under WAC. For the purpose of the qualification reviews presented to the Commission, the controlling Washington Administrative Code citation gives the Commission three options: 1) require them to submit additional information; 2) return the application to staff for further investigation; or, 3) grant a temporary or conditional license to the organization. Staff continues to work with the Spokane Athletic Round Table to bring them into compliance. Based on the review, staff recommends that the organization receive temporary approval as a nonprofit athletic organization authorized to conduct gambling activities in the state of Washington.

**Commissioner Forrest** asked if there was a general explanation for what caused the jump in supporting services. **Mr. Berg** replied that he is not privy to that information; and noted that the rules are set up so they give a greater degree of latitude if the organization offers their own programs -- because the overhead is greater, versus giving out grants. The rules allow for either 20 or 35 percent depending on the nature of the work that they do.

**Lawrence Smith**, President/Director of Athletic Round Table, responded that there wasn't a particularly big jump. The same numbers were used in 1999 as in 1998 and 1997. He explained it was basically a bookkeeping problem. **Commissioner Forrest** addressed Attachment A—(B) Supporting Services where the comparison showed \$40,000 to \$61,000. Mr. Smith said he could not answer the question without seeing the documents and looking at the accounting. Commissioner Forrest believed that before any temporary license is issued, it would behoove the organization to give the Commission a reasonable explanation within the next 30 days.

**Ms. Cass-Healy** explained that the organization's primary purpose is to promote sports activities for underprivileged and handicapped children, contribute to and help support current sports programs of colleges and universities. She explained that Attachment A, under Program Services Direct where it shows \$18,114, has to do with the services they are directly involved in -- underneath that is indirect services, which ties into the total contributions.

**Commissioner Ludwig** asked if the Spokane Athletic Round Table was an agency or group that had been in existence for at least the last 50 years. **Mr. Smith** affirmed it was formed in 1928 and incorporated in 1936. Mr. Smith reported that back in the 30's and 40's, the Round Table operated and made money from slot machines, this grew into a social thing created by a number of people who were interested in sports and sports activities. They started meeting and eventually formed a club and decided it would be good idea to take the excess money over and above their expenses and donate it to athletic events, people and organizations. The first president was Joe Albee -- the football stadium is named after him because the Round Table purchased the land, built the stadium and donated it to the city. The organization has always given money to individuals and always sponsored athletic events. **Commissioner Ludwig** asked if they were now raising funds through their charitable Bingo license. **Mr. Smith** said the club is closed -- they run Bingo and pull-tabs, and whatever they make from that, they try to give away.

**Commissioner Ludwig** asked what other gambling activities the organization had that would produce a \$31,000 loss in fiscal year 1999. **Mr. Smith** replied that it is not a loss, it is a bookkeeping issue -- it reflects direct cash contributions. **Mr. Berg** intervened to clarify the accounting report produced by the agency, and explained that the organization experienced a \$35,870 loss in the their pull-tab operation, which has nothing to do with money they gave away through indirect grants. It has to do with how costs are allocated; for example they can allocate a percentage of the wages towards pull-tab and towards Bingo. They allocate different things such as depreciation taxes – building rent, those kinds of things – and that is how they come up with the \$35,000 loss. The reason the Other Gambling Revenue is at \$31,000; in other words, less than \$35,000 loss is because they had something else, like a Crane game or something that made them about \$4,000. This has to do with their gross versus their net when you factor in what they're allocating in terms of expenses. **Commissioner Forrest** called attention to the comparison between '98 and '99, noting that it goes from losing \$1,000 to losing \$31,000.

**Mr. Berg** affirmed that commission agents did address this issue with the organization during their exit interview; the organization was not in sync with the significant progress rule – that much more than 20 percent of their expenses were overhead. Quoting from the exit interview, he read, "Mr. Smith agrees that they were out of sync with the WAC but it is necessary to substantially cut back in direct program donations as a result of a lack of funds. We requested a breakout of support services and expenses, to determine if there were any that actually could be allocated to program services." In addition, Mr. Berg affirmed the agency requested additional supporting documentation that would explain why the percentage is higher; in other words, 20 percent against a number versus 51 percent against a number.

**Commissioner Forrest** made a motion seconded by **Commissioner Orr** that this item be continued for 30 days in order to receive a more persuasive explanation of the questions that have been raised.

**Chair McLaughlin** clarified that Commissioner Forrest was choosing to return the application to staff for further investigation for 30 days. **Commissioner Forrest** affirmed.

**Commissioner Ludwig** asked what Mr. Smith's response would be to the fact that his organization may not even be legally eligible for a Bingo license. **Mr. Smith** responded that if they are not, there are going to be a lot of gambling halls that will be in the same predicament soon. He emphasized the charitable organizations have lots of competition, and it gets worse every day. He indicated that it would not surprise him if there wouldn't be any charitable organizations operating Bingo or pull-tabs within five years.

**Chair McLaughlin** called for further questions, there were none and she called for the vote to return the application to staff for further investigation for the next 30 days or until the next meeting. *Vote taken; motion passed with five aye votes.*

#### **YWCA of Yakima:**

**Robert Berg**, said this organization was formed in 1909, to be responsive to the needs of women and their families. Licensed since 1974, the organization has 372 active members and is governed by an 18-member Board. There is a full-time executive director, 14 employees, and 13 volunteers who worked over 700 hours during the measurement period towards providing the organization's program services. YWCA has four umbrella programs including the Family Crisis Program, Volunteer Attorney Services, Youth and Wellness Programs and Community Awareness and Education Programs. For the fiscal year December 31, 1999, YWCA Yakima did not meet the required combined net return percentage of 12 percent for its Class J Bingo license. They achieved a 3.5 percent net return; however, they are participating in the current net return moratorium. Their year-to-date net return as of June 30, 2000, was 5.77 percent. More than 60 percent of the organization's gambling proceeds were spent towards program services and supporting services were



less than 35 percent of functional expenses. The organization did not accumulate excessive reserves and as of this date, there are no pending administrative charges against the organization. Based on staff's analysis of the financial statements, narrative and supplemental information provided with their application, the organization has made significant progress towards accomplishing their stated purpose. Mr. Berg reported that nothing has come to staff's attention during this review that would indicate YWCA of Yakima is not qualified as a bona fide nonprofit organization for the purpose of conducting authorized gambling activities. Staff recommends they be approved as a charitable organization authorized to conduct gambling activities in the state of Washington.

**Carol Chode** introduced herself and Cathryn Cox, Finance Manager. **Chair McLaughlin** pointed out that even though the organization had a deficiency this year, it was remarkably down from the year before and asked how they did that. Ms. Chode responded that although their attendance is down, they worked very hard on the internal control of their expenses -- they have managed to get everything down but the prize payouts, and they're working on that too. **Chair McLaughlin** called for public comments, there were none.

**Commissioner Ludwig** made a motion seconded by **Commissioner Forrest** that the YWCA of Yakima be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington. *Vote taken; motion carried with five votes.*

## **5. GROUP V - QUALIFICATION REVIEW:**

### **Spokane Youth Sports Association:**

**Robert Berg** reported this organization was formed in 1966. Its purpose is to instill in the youth good sportsmanship and ideals of good citizenship. Licensed with the Commission since 1985, the organization has 19 active members. Business is conducted through a 15-person board of directors, a full-time executive director, 29 employees, and over 1300 volunteers who worked almost 125,000 hours last year providing program services to over 20,000 individuals. Spokane Youth Sports Association provides sports programs including baseball, football, golf, soccer, softball, skiing and tennis to the youth between the ages of 6 and 18 in the Spokane area. The organization also supports an indoor activity center. For the fiscal year ended December 31, 1999, Spokane Youth Sports Association achieved a net return of 12.35 percent -- less than the 14 percent required for their Class K Bingo license, but again within the requirements of the current moratorium. The organization's year-to-date combined net return as of March 30<sup>th</sup> was 18.33 percent. More than 60 percent of the organization's gambling proceeds were used to fund program and supporting services expenses. Supporting service expenses were less than 35 percent of the functional expenses, and the Spokane Youth Sports Association did not have excessive reserves at the end of their fiscal year. As of June 15<sup>th</sup> of this year, there were no pending administrative charges against the organization. Based on the analysis of financial statements and supplemental information provided by the nonprofit entity, the organization has made significant progress towards accomplishing their stated purpose. Nothing came to staff's attention that would preclude licensure of Spokane Youth Sports Association to be qualified as a bona fide nonprofit organization. Staff recommends approval for Spokane Youth Sports Association as a charitable organization authorized to conduct gambling activities in the state of Washington.

**Von Graf**, Executive Director, emphasized what the charitable dollars do throughout the state -- these dollars are going to kids who desperately need positive alternatives. **Commissioner Orr** pointed out that this particular area is Spokane's inner city. He affirmed this organization does a good job in a very high risk area.

**Commissioner Orr** made a motion seconded by **Commissioner Parker** to approve Spokane Youth Sports Association as a charitable organization and be authorized to conduct gambling activities in the state of Washington. *Vote taken; the motion carried with five aye votes.*

**Yakima Valley Opportunities Industrialization Center (O.I.C.), Yakima:**

**Chair McLaughlin** commented that this issue causes some concern because it is before the Commissioners for a Group V Qualification Review, as well as for consideration of a petition for a net return waiver later on the agenda. **Robert Berg**, commented that he is presenting a qualification review, the purpose of which is to make a recommendation, and to have the Commission determine that the organization before them is eligible as a nonprofit or charitable organization to conduct gambling activities in the state of Washington. He advised this is not an issue about their efficiency or effectiveness in conducting their gambling activities -- those are handled in other forums and other manners much like the petition to be heard later today. He explained there are other remedies in terms of filing charges or limiting an organizations' license class. He noted that all he is presenting in this segment of the agenda is based on staff's investigation review, and under agency rules, the organization does qualify as a bona fide charitable or nonprofit organization.

**Chair McLaughlin** asked why we go through whether or not they're making money. **Mr. Berg** said it depends on what the organization is doing with the money that they make. Under the current rules, this Commission believes that there is a mathematical computation that one can make based on analyzing their expenditures that says there's too much or not enough going for overhead, and that determines whether they're making significant progress towards what they're in business to do. The significant progress rule goes directly to the heart of the WACs that talk about whether under the terms of the Gambling Commission's rules and regulations, something is a nonprofit or a charitable organization.

**Mr. Berg** reported that this organization was formed in 1971 for the purpose to provide job training, educational and social services to the unemployed and underemployed of Washington State. Licensed since 1984, this organization is governed by a 16-member board including three officers. The organization has a full-time executive director and 183 employees who provide program services. Yakima Valley OIC served over 100,000 individuals and households with their programs during 1999 and their focus was on low income and disadvantaged persons. The organization is the primary contractor for the United State Department of Housing and Urban Development Youth Building Program in which the organization educates youth and constructs low income housing. This organization emphasizes the creation and expansion of various educational and training programs. The organization has recently expanded its Americorp Education Programs and assists youth in need and also offers basic and life management skill classes to detain youth in the Yakima County Juvenile Justice Center. The organization is the emergency food assistance program, regional distributor for Benton, Franklin, and Yakima Counties and they operate their own food bank in the city of Yakima. Yakima Valley OIC did not meet their required combined net return percentage of 12 percent for its Class J Bingo license. Their net return was a negative 2.41 percent. Their year-to-date net return as of June 30<sup>th</sup> was minus .68 percent. The organization's supporting services expenses were less than 35 percent of its functional expenses. The organization did not have excessive reserves at the end of their fiscal year. As of July 17<sup>th</sup> of this year, there were pending administrative charges against this organization for failing to meet their net return requirements.

Based on staff's analysis of the financial statements, narrative and supplemental information provided with their application, staff has determined that the organization has made progress towards accomplishing their stated purpose and therefore is qualified as a bona fide, nonprofit organization for the purposes of conducting authorized gambling activities. Staff recommends that Yakima Valley Opportunities Industrialization Center continue at this time to be recognized as a charitable organization eligible to conduct gambling activities in the state of Washington.

**Chair McLaughlin** called for questions from the Commission. **Commissioner Parker** commented that he would like more information about what is included under the category of Other Expenses identified in this report at approximately \$230,000. **Henry Beauchamp**, Executive Director was present to answer questions and asked to share the steps they have taken to bring their program into better compliance with

the requirements of the Washington State Gambling Commission. He advised that one of the main things they have struggled with is the net return issue and they are appealing for a net return waiver. Currently they are operating on a Class J license and they would like to appeal to the Commission to let them remain under that same class for 180 days. Mr. Beauchamp affirmed they have not met the net return requirements in recent times, but they have made drastic changes in their operation. In October of 1999, they began a review to assess areas where they could reduce costs in their Bingo game operation, and to determine what kind of factors caused them to lose customers. They discovered they had leased 90 electronic gaming machines, which was an overkill in terms of their community. They were hand-held electronic machines that had to be paid for whether they were played or not (approximately \$4.50 per session). They reduced their inventory to 50 and replaced the system with a machine that cost about \$3.00 and was only paid for when they were in use. That saved about \$1,000 a month. Another cost saving measure was to change from a law enforcement agency who was providing security to a private firm which saved another \$1,000 per month. They eliminated armored car service and now use a private security firm, which saved about \$200 per month. They cut their advertisement down from \$4,500 to \$1,000. They also cut wages for all employees that were above minimum wage. They eliminated their top management position, which was in the \$40,000 range for the year. Bingo operations hours were reduced by one hour. They have a volunteer consultant to help guide them in some of the steps that they can take to help improve their overall operation. They revised a pay-out schedule for games trying to arrive at the right gaming format that could actually help improve the Bingo position. Mr. Beauchamp emphasized they are doing everything they can to reduce overhead and bring them into better compliance. He noted there are a number of services they provide across the state --they are one of the major service providers for low income people across the state. They serve Yakima, Sunnyside, the Tri-Cities, Moses Lake, Wenatchee, Mt. Vernon and some of the Seattle region. Through Bingo revenues, they work with farm workers and the youth of farm workers.

**Chair Ludwig** advised that he was concerned last year when they only had a profit of \$1,600 from gambling activities, and now he is seeing a loss of \$272,000. He affirmed their organization does great work and helps a lot of people, however, he perceived they are doing that with the almost \$7 million of non-gambling revenue they have. He emphasized this organization is running a gambling operation that is losing money -- for their organization to go from first to last and become a losing operation, it is hurting the program, not helping it. He affirmed the net return is a bad problem and competition is tough, but from a business standpoint, the organization cannot continue to operate at a loss. This hurts his program as well as all other operations in Yakima. **Mr. Beauchamp** indicated that they would close before they hurt other organizations. He anticipated being in the black soon because of the plan they have in place and as evidenced by the results they are seeing at this time. **Chair McLaughlin** asked how they are making up for the \$274,467 they lost. Mr. Beauchamp said they have lots of rental properties and they have significant reserves they can use. Chair McLaughlin asked if any of the funds were coming out of the federal grant and Mr. Beauchamp said absolutely none.

**Mr. Berg** responded to Commissioner Parker's earlier question regarding the financial summary sheet, asking for more information about what is included under the category of Other Expenses which by this report is approximately \$230,000. He explained that of the \$230,000, \$127,000 is for equipment which included replacement of the HVAC system -- about \$33,000 of it was for advertising, and the remainder was for smaller categories. With no further questions from the Commissioners, **Chair McLaughlin** opened the public hearing on this matter.

**Theresa Smith**, St. Joe's Bingo, Yakima said she sympathized with Yakima Valley OIC, however, this has been going on for over two years. She noted the other three clubs in the area are struggling just to stay alive and this is actually hurting them. She stated that Yakima Valley OIC is not funding any programs, so they must not need the funds; the other three organizations need the funds or they have no programs -- no school or shelters. Ms. Smith believed that Yakima Valley OIC had a lot of other income that the other organizations have no access to. She didn't think this was fair. In this case there are no funds being

raised. She emphasized that it is taking money out of the other clubs' pockets for Yakima Valley OIC to lose money. **Commissioner Ludwig** asked her what days her club was open. Ms. Smith responded she was open Friday, Saturday and Sunday, and Mr. Beauchamp's club was open Friday, Saturday, and Monday. Of the three of the clubs, St. Joe's is surviving the best. The other two organizations are really struggling. She said they were all tired of it. **Carol Chode**, Primary Bingo Manager of the YWCA concurred with Ms. Smith. She affirmed that it is difficult -- they all know the non-profit revenues from gaming are important to their programs. She questioned how long a director can continue to operate a program at a deficit when they are taking away from other program services, which is not helping the other programs and community.

**Mr. Beauchamp** responded that he never thought it would ever come to clubs testifying against each other after having worked together for so long. He said that the amount of money they allude to was not as much as they might think. He said their federal money had to be used for what it was designated for. He hoped the Commission would give the Yakima OIC the opportunity to continue as they are -- in July and August, they finished with a plus. He affirmed that if things don't turn around, he will not stick with Bingo. In the past Bingo helped them become the best organization in the state, and they can't afford to become a drain. He said if the Yakima OIC doesn't finish out the year with a positive trend, they would not continue.

**Commissioner Parker** said he noticed that there's a significant difference in the percentage of receipts that is paid out as prize money. His pay-out rate according this financial summary sheet is 83.6 percent of receipts. He asked if that meant he is paying higher prizes or if he is competing with the other Bingo operators by essentially offering more in pay-outs. **Mr. Beauchamp** said they are not offering more in pay-outs; they have been adjusting trying to get the right games and the right pay-outs, too. He affirmed they are certainly not paying more than the competition. Commissioner Parker asked if they are not paying more, why is there a higher percentage? **Director Bishop** said the YWCA paid 79 percent and Yakima Valley OIC paid 83 percent which is a significant difference. Mr. Beauchamp said the only explanation he could think of would be the different games, which might have been part of their problem.

**Commissioner Forrest** said he didn't think they could go on much longer operating with losses. He asked what the effect would be of limiting the organization's license to a Class G, and thought it would make it even more difficult for the organization to break even. **Director Bishop** noted that we are drifting out of the qualification review, and getting into the appeal issue. He said staff was attempting to keep these issues separate. He reported that in the early part of this year, the agency issued charges to Yakima Valley OIC for a loss of income for the last year. The WAC requires that if you lose money from the Bingo operation, you are deemed to be operating purely for gambling purposes. Commissioners have given the director the option of summarily suspending the license to help the organization since they're not helping themselves. Within that same WAC rule, there's a caveat that directs the director to look at the next three-month period, and if the organization makes a profit during that period, the director would only reduce their license class according to the rule. In this particular case, the organization made a profit during the first quarter. The rule in this case, since they were in the second year of operation, stipulates their license could be reduced by no more than half of their level of income, and that was a Class G.

**Commissioner Forrest** said he was always puzzled by this sanction because it doesn't seem to deal very well with the problem. The problem is not making money, and by reducing the revenue, we are making the situation worse. **Director Bishop** noted that in the second quarter, Yakima OIC lost money again, and again staff had to abide by WAC rules. WAC required them to follow the particular steps because this is an administrative process. Commissioner Forrest said he didn't have a good solution because "we" can't condone losing money. He stated he was more sympathetic to giving some time and saying at the end of that time period if they are still out of compliance, it's the end of the license. He could not understand where the idea came from that to cure not meeting an organization's quotas, we should reduce their income.

**Mr. Berg** said that while he can't provide a solution, the only purpose in his presentation today was to recommend to the Commission that that they be authorized as a nonprofit charitable based on the rules for qualification reviews.

**Commissioner Forrest** made a motion that the Yakima Valley OCI be authorized as a nonprofit charitable organization based on the rules for qualification review purposes only; and that the Commission would deal with sanctions separately.

**Chair Ludwig** asked if the Commission didn't adopt staff's recommendation and thereby not authorize Yakima OIC as a nonprofit organization, if that makes the hearing moot. **Mr. Berg** said that factually speaking, under the WAC the Commission only has three choices. They can authorize them as charitable/nonprofit to conduct gambling activities in the state of Washington, they can require the licensee to submit additional information or they can refer this back to staff for further investigation. The WAC under which qualification reviews come before the Commission does not specifically allow the Commission not to allow that activity. Commissioner Ludwig directed his next comment to Mr. Beauchamp, advising that the organization needed to take a long hard look at his losing operation because it is taking business away from other people who really need it and who don't have the other \$7 million to fund their programs.

**Commissioner Orr** seconded the motion. He said that when he looked at the financial statements, he was amazed at the rent. **Chair McLaughlin** asked who the Yakima OIC's landlords were. **Mr. Beauchamp** said they owned their own building. Commissioner Orr asked why they charged themselves \$60,000 rent a year. Mr. Beauchamp said it's the depreciation schedule.

**Commissioner Parker** asked if the Commission should act on the motion to authorize them to continue doing what they're doing. Director Bishop has noted the Commissioner have the option of either referring this issue back to staff for further investigation, or asking the licensee to submit additional information. He asked if they could choose to have a combination of those things. **Mr. Berg** said they could also postpone this issue or carry it over to the next meeting. However, based on what they have in terms of what the specific WAC rule dealing with qualification reviews is all about, that probably would not change between this month and next. **Chair McLaughlin** verified that if the motion is approved, they are just saying the organization is a legitimate charitable organization that can have a Bingo game. **Director Bishop** said if they were to set Bingo aside, this is a qualified charitable/nonprofit organization authorized to conduct raffles or fund raising events or amusement games. In other words they meet the statutory requirements of a charitable/nonprofit organization, and they also would be allowed to operate Bingo. Now, to the other set of rules; are they operating Bingo in accordance with the rules -- No. However, they are a charitable/nonprofit organization and that is what this first process is supposed to determine. Chair McLaughlin asked if a temporary order could be issued addressing further actions if they don't become profitable within six months. **Director Bishop** affirmed. **Commissioner Forrest** indicated that action should occur in the hearing; and if he understands correctly, if the motion is adopted, then they would have settled (as has been explained) that they are entitled to be in the ballpark, but so far, they aren't complying with the rules. The options the Commissioners have under that are set forth under Tab 1, on page 7 of that memo.

**Chair McLaughlin** reiterated there is a motion before the Commission whether or not this is a legitimate charitable organization that is authorized to conduct gambling in the state of Washington. *Vote take: motion carried with four aye votes and one nay vote cast by Commissioner Ludwig.* **Chair McLaughlin** recessed the meeting at 3:50 p.m. and recalled the meeting to order at 4:00 p.m.

**Educational Institute for Rural Families, Pasco.**

**Robert Berg**, Assistant Director, noted the report was before the Commission, and he was pleased to

report that this organization was complying in all aspects. Based on the review, staff recommends that the Educational Institute for Rural Families be approved as a charitable organization and authorized to conduct gambling activities in the state of Washington.

**Commissioner Forrest** made a motion seconded by **Commissioner Orr** to approve Educational Institute for Rural Families as a charitable organization and that they be authorized to conduct gambling activities in the state of Washington. *Vote taken; the motion carried with five aye votes.*

**6. HOUSE BANKED CARD ROOM APPROVALS:**

**Homeplate Bar & Grill, Liberty Lake:**

**Derry Fries**, Assistant Director, Licensing, reported this organization has applied for a license to operate five tables of house-banked card games at the Homeplate Bar & Grill, located in Liberty Lake, Washington. This organization was formed as a privately-held Washington corporation in May of 1997. The organization has 1,000 shares of outstanding stock, all of which are owned by the President, Robert Lewis. The applicant has no other license location and at this time there is none pending. They are presently licensed and are conducting a Class A punch board and pull-tab. The financial investigation reveals no disqualifying information. Special Agents conducted an onsite pre-operational review and evaluation, and in accordance with the rules of the Commission, the applicant was found to be in compliance. Based on the licensing investigation and the review and evaluation, staff recommends Homeplate Bar & Grill be licensed as a house-banked public card room authorized to operate up to five tables with a maximum \$25 betting limit.

**Chair McLaughlin** called for questions, there were none.

**Robert Lewis**, Corporate President, noted this was a new venture for him and he thanked the Commissioners and staff for the help he received. **Chair McLaughlin** asked how many house-banked card rooms there were in his area. Mr. Lewis responded that in Liberty Lake, they are the only one, but there are about six in Spokane County.

**Commissioner Orr** made a motion seconded by **Commissioner Forrest** to approve Homeplate Bar & Grill as a house-banked public card room with a maximum \$25 betting limit. *Vote taken; motion passed with five aye votes.*

**Silver Dollar Casino, Mount Lake Terrace:**

**Derry Fries**, Assistant Director, reported this organization is owned by Little Nevada II, Inc. This organization has applied for a license to operate up to 15 tables of house-banked card rooms at the Silver Dollar Casino, Mount Lake Terrace, Washington. Little Nevada II, Inc. was formed as a privately-held corporation in September of 1998. Corporate headquarters are located in Renton, Washington. Other locations where the corporation operates house-banked card rooms are the Silver Dollar Casino, SeaTac, Washington, the Little Nevada, Inc. d/b/a Silver Dollar Casino and Restaurant, Tukwila, and the Little Nevada III, Inc. d/b/a Silver Dollar Casino, Tacoma, Washington.

Special agents conducted a criminal and personal history background investigation on the substantial interest holders and initiated and completed financial investigations on both the corporation and the stockholders. No disqualifying information was found. Special agents conducted an onsite pre-operational review and evaluation in accordance with the rules of the Commission on September 1, 2000. The applicant was found to be in compliance. Based on the licensing investigation and the pre-operational review and evaluation, staff recommends the Silver Dollar Casino of Mount Lake Terrace be approved to operate up to 15 tables with a maximum \$25 betting limit.

**Chair McLaughlin** called for questions. **Commissioner Ludwig** asked if the other three properties in that general area were all at a \$100 limit. Mr. Fries affirmed two are, the Tacoma facility has a \$25 limit. **Tim Iszley**, President, came forward to answer questions. There were none and the Chair called for a motion.

**Commissioner Orr** made a motion seconded by **Commissioner Ludwig** to approve the Silver Dollar Casino of Mount Lake Terrace as a house-banked public card room with a maximum \$25 betting limit. *Vote taken; motion passed with five aye votes.*

**Chair Ludwig** explained why he voted "aye." In the past he would have voted "no" because he had reservations about multiple ownership's. Since then the Commission has established permanent rules with no limitation. The Legislature has had a chance to consider this matter and has made no limitations. Therefore, any concerns he previously held, no longer exist.

7. **HOUSE-BANKED CARD ROOM PHASE II REVIEWS:**

**Charlie Mac's Casino, Sea Tac**

(Removed from the Agenda)

8. **DEFAULT HEARING:**

**Susan Rosebrook, Card Room Employee, Tukwila**

(Removed from the Agenda)

9. **CONSIDERATION OF PETITION FOR NET RETURN WAIVER:**

**Yakima Valley OIC, Yakima**

**Ms. Patjens** reported that staff is requesting that an order be issued limiting Yakima Valley OIC's license to a Class G beginning October 15. Originally, charges were issued to the organization because it was not meeting the net return requirement and it also had a negative cash flow. At that time it had a negative cash flow of almost \$85,000 and its net return was a negative two percent plus some hundredths. Its net return should have been about 7 percent. We actually issued the Notice of Intent to Limit License Class, because the organization did have a positive cash flow for the first quarter of 2000. The reason the organization is before the Commission today is because they requested a waiver of the Notice of Intent to Limit License Class. They have asked to be limited to a Class H, not a Class G. When staff reissued the charges, they were still not meeting the net return requirements and at this time, Yakima OIC has a Class J license which authorizes between \$2.5 and \$3 million.

**Ms. Patjens** reported that for the first six months of the year, their net return is a negative .68 percent, and they had a negative cash flow of about \$2,700 during this period. They've gone from being in the black for the first quarter, to being in the red when both the first and second quarters are looked at together. Ms. Patjens addressed how this situation would be handled under the rules proposed by the Net Return Task Force. Under those proposed rules, if an organization had a negative cash flow for two consecutive quarters, their license would be summarily suspended. In this case, it is likely the recommendation would be this, and the Director would issue charges for a summary suspension, and then they would go through the administrative process and eventually appear before the Commission.

**Chair McLaughlin** noted that since the proposed rule has not been adopted, the Commission could only do what is before them. **Ms. Patjens** affirmed. She went on to call to their attention to a letter from Yakima Greenway Foundation which notes some of the things they also heard from YWCA and from the Sister Rebecca organization today. The Yakima Greenway Foundation feels they have worked very hard to stay in compliance, and in their view, Yakima OIC has not done the same. They feel that Yakima OIC is drawing money out of the charity, not putting it in. The organization requested that the Commission take action by closing the organization. Ms. Patjens clarified that staff is not asking the Commission to do that. The

remedy has to be that which is set forth in the rule, which is to reduce the license class. She said it may seem unusual to have received a letter like this, but the rules do provide that the Commission may take testimony from other parties that may be affected by approval or denial of a petition. They have heard from two other organizations in the area. Ms. Patjens wanted to make it very clear that there is no question this organization performs good work. Certainly, providing job training, education, and social services to the underemployed and the unemployed are very important functions. The problem here is that the Bingo organization is not helping them to do this – it's taking money away from other sources which could be used to fund the programs. For that reason, staff is asking that the organization be limited to a Class G effective October 15<sup>th</sup>. The organization is asking that they be limited to a Class H instead of the Class G. The difference in the gross receipts is about a half a million of dollars.

**Chair McLaughlin** called for questions and there were none. **Commissioner Forrest** asked to air a motion without making it. He reminded the Commissioners that they have continued some other cases over to January first; and he noted that he was not very sympathetic with reducing the category and class. He said he would be more inclined to continue this to January 1<sup>st</sup> for further investigation. As far as he is concerned, he believes if they lose money this year, they should consider terminating the license.

**Chair McLaughlin** asked Director Bishop when the new rules would go into effect if approved. **Director Bishop** responded that it would be the 31<sup>st</sup> of December. Chair McLaughlin inquired if under the new rules, if an organization was not making money, they would automatically be put out of business. **Director Bishop** said it would not be automatic – it shortens the period and takes some of the leniency away. It still leaves some discretionary period or discretion for the director if they've corrected a problem.

**Director Bishop** clarified that under the current WAC rules, Yakima OIC's license would be limited to a G. They are asking the Commission to give them a waiver to increase it to an H. If the Commission doesn't act on this, their license will be G by the rule. If they do act, they get some of the same leniency that you've given the other organizations to operate until July.

**Commissioner Ludwig** said he was confused about the motion in ruling on their qualification review. He was under the impression that was being continued to the January meeting. **Chair McLaughlin** said he misunderstood the motion. **Commissioner Ludwig** then said he voted incorrectly. Commissioner Forrest said the memo on the hearing outlines that one of the options was waiving the net return requirements until January 2001 as they have done in other cases. The Commission's options at the tail end of the memo which they received from Attorney Froud is under Tab #3, Petition Net Return Waiver where she outlines the Commission's options.

**Chair McLaughlin** asked if under the new classification, once Yakima OIC reaches a certain gross income, they would have to stop playing. **Ms. Patjens** affirmed. She noted if they are doing so much better that they can meet the net return requirements, for a Class H, which is what they want to go up to – then they would be granted that automatically. If they can't reach that, they would be back in the process asking for an upgrade. Most likely staff would feel they would need to deny it if they weren't meeting the net return requirements. **Director Bishop** explained that Yakima OIC could structure their game to spread the million dollars over a whole year or they can go all out, hoping to qualify for a license upgrade. It's a planning thing for what one's license class is. **Commissioner Forrest** said it still doesn't get to the heart of the matter, which is not making money.

**Commissioner Parker** made a motion seconded by **Commissioner Ludwig** to deny the Petition and downgrade Yakima Valley OIC's license to Class G.

**Mr. Beauchamp** advised that he was not positively clear of the nuances of the G versus the H or the J license, but he hoped that if his organization is downgraded to the G, that they could take action in a timely



fashion to upgrade it. **Director Bishop** advised the organization would have the ability to make \$1.5 million under a license G classification. Director Bishop noted their new license started the first of July. **Chair McLaughlin** asked if we are talking about gross – not net. **Director Bishop** responded that the limit is on the amount of gross receipts they can receive. If Mr. Beauchamp asked for an upgrade and had the records available, and staff saw that he had met the requirements over the previous period, then the upgrade would just be a procedure and doesn't have to come before the Commission. It's already codified in WAC rules. Director Bishop explained there's a six month period to meet the net income requirements. Under the current moratorium, Yakima Valley OIC would be under the current rules for the rest of this year.

**Director Bishop** said that under the current requirements, the reviews must be offset for six months to allow for the accounting prior to the license effective date. Whatever action was taken in July, was predicated by their performance for the year that ended December 31, 1999. They're still in their current process, so under the moratorium, they would have had to achieve at least a 3 percent net return for a six month period to be able to upgrade to H – that could start effective with July or whenever they wanted to start that period.

**Mr. Fleisher** clarified that the license years are not all the same and they are not all on the calendar year. In the case of the Yakima Valley OIC's Bingo, their licenses started six months after their fiscal year. In this organization, that would be July 1<sup>st</sup>. They've been a July 1<sup>st</sup> licensee and they would remain a July 1<sup>st</sup> licensee. **Mr. Berg** affirmed that we're talking about a change of license class – not necessarily a change in the license period. **Director Bishop** explained Yakima Valley OIC's license period has been set, and this is a renewal process they are going through. It runs continuously barring an action to intervene. Staff has had to issue them the J license, and staff has now asked that they be downgraded to G. Yakima Valley OIC is asking that they be awarded an License Class H.

**Commissioner Parker** asked if they could draft their action in such a way that they don't run afoul of a lack of due process notice to this licensee – something that says effective the 15<sup>th</sup> on a prorata basis, they have to achieve this reduced level. That they're on notice, but it doesn't become retroactive to July 1 – it takes effect on September 15<sup>th</sup>, they can stay on a prorata basis for the remainder of their license year, however, they have to be operating at the G level. **Director Bishop** said that can be done through an order, and he would talk to the attorneys. Commissioner Parker indicated that he was concerned that on September 14<sup>th</sup> we're telling the licensee that effective July 1<sup>st</sup>, they need to be operating at a lower level. **Commissioner Orr** said his concern is that the Commission changes a license class without really changing the license; we give them a three-quarter waiver not to qualify and then they re-qualify. Director Bishop affirmed that in this particular case, that is exactly what happened. He believed Commissioner Parker was suggesting that we start from another period and say, "if you're in compliance from here forward, then you will be able to operate" and Director Bishop believed that can be done by an order. Commissioner Orr said he would second an amended motion.

**Commissioner Parker** said that with permission of the Chair, he would like his motion to be amended. The Chair affirmed. Commissioner Parker noted that he would intend to recommend that staff be asked to come forward at the very next meeting with recommended regulation changes that would address this issue so Commissioners could then have that in front of them. **Chair McLaughlin** asked if on this particular issue, if he would like to withdraw his motion and make a new motion.

**Commissioner Parker and Commissioner Ludwig withdrew the original motion and second; and Commissioner Parker made a new motion seconded by Commissioner Orr that the Yakima Valley OIC Petition for a Waiver be denied; and that staff's recommendation that their license be downgraded to a Class G License would become effective September 15<sup>th</sup> and applied for the remainder of their license year at that reduced level.**

**Chair McLaughlin** opened the meeting for discussion.

**Mr. Fleisher** clarified that it is true that the Yakima Valley OIC can come in and petition for an upgrade at any time when they believe that they will be exceeding the license class, but in order to qualify for the upgrade, they would have to show that they would be able to meet the net return requirement. If they can show that, then the upgrade is basically automatic, but otherwise they would have to petition.

**Chair McLaughlin** closed the public hearing and called for a vote. *Vote take: motion carried with four aye votes; Commissioner Forrest voted nay.*

**Chair McLaughlin** apologized for the delay in meeting the 3:00 p.m. hearing that was scheduled. She announced that Commissioner Marshall Forrest would be taking over the duties of the Chair for today's hearing.

**10. PETITION FOR REVIEW:**

**Dixie Schule, Card Room Employee, Seattle**

Susan Mindenbergs, Attorney for Dixie Schule

Steven Reinmuth, Assistant Attorney General

The cases were presented. At the conclusion, **Attorney Mindenbergs** expressed an objection; she felt the Petition was infirm because the timelines had not been met and because they had not been provided the evidentiary base. She believed the Commission should dismiss this action. The Commission chose at this point to recess the hearing and continue it for 30 days, until the October 12 and 13 meeting in Seattle, and directed Attorney Reinmuth to provide a complete copy of all the documentation that has been provided to the Commissioners to Attorney Mindenbergs. Attorney Mindenbergs will then be provided an opportunity to waive and submit on the argument as the records stands or if she desires further oral argument, the Commission shall grant the opportunity.

**11. OTHER BUSINESS/GENERAL DISCUSSION/COMMENTS FROM THE PUBLIC:**

**Chair McLaughlin** called for any other business; there were no comments.

**12. EXECUTIVE SESSION TO DISCUSS PENDING INVESTIGATIONS AND LITIGATION:**

**Chair McLaughlin** called for an Executive Session at 5:25 p.m. **Chair McLaughlin** noted no further business would be conducted following the Executive Session, with the exception of adjourning the meeting.

**13. ADJOURNMENT:**

**Chair McLaughlin** recalled the open public meeting at 6:10 p.m. and declared the meeting adjourned until 10:00 a.m. September 13, 2000.

**COMMISSION MEETING  
FRIDAY, SEPTEMBER 15, 2000  
DRAFT MINUTES**

**Chair McLaughlin** called the meeting to order at 10:00 a.m., at the WestCoast Wenatchee Center Hotel. She reminded everyone that the October Commission meeting will be held at the DoubleTree Guest Suites and Inn located at SouthCenter, Seattle rather than in Silverdale. The following attendees were present:

**MEMBERS PRESENT:**

**CHAIR ELIZABETH McLAUGHLIN, Chair;  
COMMISSIONER CURTIS LUDWIG;  
COMMISSIONER MARSHALL FORREST;  
COMMISSIONER GEORGE ORR; and  
COMMISSIONER ALAN PARKER**

**OTHERS PRESENT:**

**BEN BISHOP, Executive Director;  
ROBERT BERG, Deputy Director, Operations;  
ED FLEISHER, Deputy Director, Policy & Government Affairs;  
CALLY CASS-HEALY, Assistant Director, Field Operations;  
DERRY FRIES, Assistant Director, Licensing Operations;  
AMY PATJENS, Manager, Communications & Legal Dept.;  
JERRY ACKERMAN, Assistant Attorney General;  
SHERRI WINSLOW, Special Assistant; and  
SHIRLEY CORBETT, Executive Assistant**

1. **MINUTES – August 10 & 11, 2000:**  
Commissioner Orr made a motion seconded by Commissioner Ludwig to adopt the minutes of the August 10 and 11, 2000 meeting as presented. Vote taken; motion carried with five aye votes.
2. **AGENCY REQUEST 2001 LEGISLATION:**  
**Amy Patjens**, Manager, Communications & Legal Department, reported that staff has proposed two small changes to the proposed cheating legislation. Referring to Page 2, Section 3, cheating in the second degree is currently proposed as a Class C felony; staff would like to change that to a gross misdemeanor. On Page 9, staff proposed to delete the language about ranking cheating in the second degree as a felony. If cheating in the second degree is ranked as a gross misdemeanor, they will not require a ranking. Cheating in the first degree would be when there is a conspiracy cheating or when a licensee or even an owner is engaged in cheating. Ms. Patjens noted there can also be cheating incidences in Bingo. Any other cheating by an individual, for example, would be a gross misdemeanor. Ms. Patjens affirmed this will be a better bill and it will give the prosecutors flexibility. She anticipated it would have better success with

the Washington Association of Sheriffs and Police chiefs, as well as the Washington Association of Prosecuting Attorneys.

**Commissioner Forrest** said he was not completely satisfied because it appears that one prosecutor complained one time. He did not see where there is a demonstrated need to create new felonies. If the industry is that stirred up, he believed they should persuade the Legislature, and if the Legislature agrees it is necessary, so be it. **Commissioner Ludwig** said he didn't like the bill when there were three different degrees, and while he shares Commissioner Forrest's concern, he has focused his attention on the fact that there are some serious situations where a felony-cheating statute might help if the cheating is aggravated. Now that there is just one felony and one gross misdemeanor proposed in the legislation, he supports the proposal. It gives the prosecutor a chance to prosecute in an efficient manner those situations that are not real serious, and it also makes available the stronger provisions regarding those serious situations where a group of people scheme to defraud an establishment.

**Commissioner Orr** made a motion seconded by **Commission Ludwig** to approve the proposed cheating legislation. **Chair McLaughlin** called for further discussion.

**Commissioner Forrest** read into the record a portion of the August minutes where Ms. Patjens informed the Commission how often there had been cheating problems that might warrant a change in the rules governing cheating. "So far there've been about six or seven cases over the last eight years and there was a feeling there should be a law which is more commensurate with that activity." He went on to say that in the modern climate of crime in the United States, even though the statistics are improving, six or seven cases in eight years didn't stir him up enough to support a change in the cheating laws. **Chair McLaughlin** commented that with the house-banked card rooms and more and more casinos the potential for cheating may increase.

**George Teeney**, New Phoenix Last Frontier, LaCenter, concurred that with the house-banked card rooms increasing, there is a greater potential for cheating cases. He indicated that in gaming, there are basically two thoughts along taking care of cheats; there's the tolerant and the intolerant policy. Generally speaking, with a tolerant policy, the thieves know nothing is going to happen to them, or it will be a hand spanking at best. They will come back again and again to attack a particular casino or the state. If there is an intolerant policy, it sends a message to thieves not to come into the state. The problem with not taking people to court is that the word gets out that a particular club is easy to hit, and cheating teams will teach other teams which clubs to target. He noted there are books and monthly publications that are sent out over the Internet or the Gambler's Bookstore in Las Vegas that tell cheaters where to go cheat. He said these types of publications are made available on a monthly basis and it's delivered directly to the cheater. Mr. Teeney believed that if someone is pinching or capping a \$5 bet on a Blackjack table, they should not have their life ruined because of an errant mistake -- that it could be handled accordingly, within the club or within the local jurisdiction. He believed, however, things such as organized cheating teams must be stopped -- if Washington State doesn't punish potential cheaters, there could be a lot more problems.

**Commissioner Orr** expressed his belief that part of the Commission's responsibility is the public's perception of gambling. He hoped that what we are saying is that we are not tolerating cheaters. If this legislation is not requested, and the industry doesn't request it, the politicians will not crusade this issue. He believed that part of the Commission's responsibility is to send a message that the Commission is not tolerant of cheaters. He emphasized part of the Commission's responsibility is to put this issue on the table and cause a debate. He believed the prosecutors and the industry would be there, and hopefully a public statement developed that cheating isn't going to be tolerated. To that end, Commissioner Orr stated that he supported this request for legislation.

**Ms. Patjens** noted that although there have only been six or seven major conspiracy cases, that did not take into account the smaller cases staff has had to handle. As a routine matter, staff does not refer those to the prosecutor's office because in most cases the issue would be handled in-house.

Vote taken: motion carried three to one with Commissioner Forrest voting no. (Commissioner Parker was not in attendance for this discussion)

## Rules Up For Discussion

2. **Charitable/non-profits Owning a Commercial Gambling Establishment.**  
**WAC 230-04-026** - *Ownership of a commercial gambling establishment by charitable and nonprofit organizations.*

**Ms. Patjens** reported that a nonprofit that has created a for profit corporation has submitted an application to open a house-banked card room. This issue has been discussed since June, and at the last Commission meeting, the Commission decided to file a rule that would make it clear that this would not be allowed. The Commission also read a policy statement into the record. Since the last meeting, Assistant Attorney General Ackerman suggested the inclusion of language in the rule that parroted some of the phraseology in RCW 9.46.120, which was the law that says that no nonprofit organization who takes any part in the management or operation of the gambling activity shall take any part in the management or operation of another gambling activity without approval from the Commission.

**Ms. Patjens** called attention to two amendments that would add that language. There are two different versions rather than one, because in the past months, the Commission has been talking about the situation of a charity creating a for profit corporation and opening up a card room. Staff wanted to place this on the agenda to make sure that it is the Commission's intent or choice – this could be limited to just public card rooms, or it could be limited so a nonprofit organization could not own or operate any type of interest in a commercial business. The rule filed last month would apply to all gambling activities, including a commercial restaurant that happened to have pull-tabs. **Ms. Patjens** pointed out that Amendment #1 has a double negative, so the phrase doesn't make much sense. The word "not" in the fourth line would need to be removed. **Chair McLaughlin** asked if that also fit for Amendment #2. **Ms. Patjens** affirmed. She noted that staff has no preference on either amendment.

**Commissioner Forrest** addressed Alternative #1, and voiced his opinion that the Commission probably didn't want to say that a charity couldn't own stock in a company that is traded on the New York Stock Exchange, for example, that engages in gambling. He believed we ought to say something so that we're not precluding a charity from owning stock that's unrelated to the operation of a Washington licensed gambling operation. Commissioner Forrest emphasized that he wanted clear language that the Commission was not trying to regulate their ownership of things that are external to the state of Washington.

**Commissioner Orr** asked for clarification on the alternatives and their effect. **Jerry Ackerman**, Assistant Attorney General, responded that the purpose of the amendments was to focus on the language in RCW 9.46. The alternative is written very broadly, and the most reasonable interpretation would be that the WACs can only apply to those things that are regulated under 9.46. However, what Alternative #1 says is: "shall not own any interest in a commercial business licensed to conduct gambling activities." Commissioner Orr affirmed if the Commission curtails the ownership of any other licensed gambling business in Washington State, the amendments would not be necessary. **Chair McLaughlin** affirmed that if the Commission wanted to be that strict, he is correct. She verified that if Alternative #1 is approved as written, although the nonprofits can have pull-tabs in their establishment now, they could not own an interest in a restaurant that sold pull-tabs even though they have them in their own establishment. **Ms. Patjens** affirmed.

**Mr. Ackerman** noted that the statute still says: “no person who takes any part in the management or operation of any such gambling activity shall take part in the management or operation of any gambling activity conducted by any other organization or any branch of the same organization unless approved by the Commission.” The issue that comes up with Amendment #1 is that the language would not prevent a nonprofit from owning an interest in a commercial operation that had pull-tabs. However, the statute still does prohibit it unless the Commission approves it. The Commission would have to make a case-by-case determination on each and every attempt by a nonprofit to acquire an ownership interest in a commercial endeavor. Mr. Ackerman indicated that Amendment #2 says that we’ve made that decision; it’s not going to happen for card rooms or pull-tabs or anything else that the Commission licenses under the authority that the Commission possess by virtue of RCW 9.46. Under Amendment #1, the statute will require the Commission to make case-by-case determinations each time a nonprofit wants an interest in a second license. **Ed Fleisher**, Deputy Director, affirmed and noted the difference in the language between the two alternatives is in the very last line. Amendment #1 refers to ownership of a public card room and Amendment #2 refers to ownership of any other gambling activity. **Chair McLaughlin** noted that in other words, they couldn’t have any mutual funds that had any gambling stock. **Director Bishop** suggested that Alternative #1 could be more clearly defined by adding “licensed by the Washington State Gambling Commission” and that would not interfere in their other ownership issues.

**Commissioner Orr** thought we should say these are the rules -- if this adversely impacts you, we have plenty of time for debate -- we can deal with it, but in the meantime, “a deal is a deal” and you are not going to own a part of a business in this state that has to do with gambling for profit. Nonprofit is nonprofit, and for profit is for profit.

**Chair McLaughlin** noted that Alternative #1 says a charitable or nonprofit organization licensed by the Washington State Gambling Commission cannot own any interest in a commercial business licensed to conduct gambling activities; and asked why they couldn’t own one if they didn’t have a Bingo game. Chair McLaughlin said the Commission can’t tell someone what to do, other than if they are licensing them. **Mr. Fleisher** agreed that Chair McLaughlin was correct and said that Alternative #1 speaks to all charitable and nonprofit organizations and the statute that they are basing this rule on in 9.46.120. It speaks to someone having more than one license, so it really does not give authority to the Commission to limit a license. **Commissioner Ludwig** thought that Mr. Ackerman pointed out that charities can’t do anything right now, other than those activities that are authorized by statute. **Mr. Ackerman** said charitable/nonprofits are defined within the statute and the Commission licenses their activities as such. He believed Amendment #1 and Amendment #2 was an attempt to get the language of their WAC tracking the statute so there is no question what the Commission is trying to do. The Commission’s desire is to set forth guidelines for the industry so they know what types of activities the Commission will consider allowing them to take on as an interest holder in a second license, if any. That is the Commission’s call to make. Alternative #1 is so broad that it was, staff felt, a bit unclear as to exactly what we were trying to regulate. Because we are imposing restrictions in the WAC on charitable or nonprofits, were we trying to restrict them from the 10 shares of Bally’s; and/or were we trying to restrict them from mutual funds? **Mr. Ackerman** affirmed the Commission has regulatory authority over charitable/nonprofits that have gambling licenses. Staff was trying to clarify this so that people would understand the rules. If in fact the Commission is not inclined to allow this under any circumstances, we must tell them. Right now, the statute basically says they can’t do this unless the Commission allows, which puts the Commission into a case-by-case decision making process. Mr. Ackerman thought that what he heard the Commission saying in the last couple meetings, was that they actually did know how they felt about this issue, and the Commission wanted to make it clear for constituent groups and for Director Bishop, so that he can deal with the applications as they come in.

**Chair McLaughlin** noted the request before the Commission is for an application to own a card room. She asked why we were going farther than that with an Amendment. **Mr. Ackerman** said the application is out

there; the statute says the applicant can't do this unless the Commission approves. Meanwhile, Director Bishop is put in the position of considering an application and he cannot speak for the Commissioners. The Commission may want to stay in a case-by-case mode. However, he would advise Director Bishop to tell the applicant the statute says they can't have two licenses unless approved by the Commission; therefore, a second license will not be granted without Commission approval. They may then appeal to the Commission for an exception. Mr. Ackerman explained that's where the Commission is by statute. Chair McLaughlin said that Amendment #1 would make it very clear that they could not own a public card room, it does not say that they can't own a restaurant that has pull-tabs. Mr. Ackerman affirmed. Chair McLaughlin asked why they were going farther than Amendment #1.

**Commissioner Parker** believed this could be interpreted as sending a signal that we're open to the possibility that other kinds of commercial gaming activities could be acquired and owned by nonprofits and charities. In essence, the Commission has said they are only going to do "this" -- as to the rest of the issue, we're not making any decision right now. That then leaves the Director in an awkward position.

**Commissioner Orr** said that if the WAC is wrong, that's one thing, but if we're saying that a nonprofit organization is going to be a nonprofit organization -- you can't have portions of for-profit gambling whether it's a manufacturer or whether it's a card room. Commissioner Orr expressed his strong feeling in support of Alternative #1 with no amendment. **Chair McLaughlin** commented with the addition of "licensed by Washington State Gambling Commission" as previously recommended by Commissioner Forrest. Chair McLaughlin asked if Alternative #1 with Commissioner Forrest's addition of "licensed by the Washington State Gambling Commission" does the same thing as Amendment #2? **Mr. Ackerman** believed it did. He said what we're trying to do in Amendment #2 is use the same language that the statute uses for consistency, so that people would read the statute, read the WAC, and then say this is what they're talking about -- it's the same thing. Certainly, the Commission can limit Alternative #1 by using the language "licensed by the Washington State Gambling Commission" and you'll end up in the same place as you would in Amendment #2. Mr. Ackerman advised that the real policy decision for the Commission is whether we are going to limit this to just card rooms, or whether we intend to limit a charitable/nonprofit's ability to have an interest in any kind of commercial license.

**Chair McLaughlin** announced this item would be scheduled for further discussion and final action next month. She then opened the topic for public testimony. There was none and the hearing was closed.

**Commissioner Forrest** thought it would help staff if the Commissioners were to say that the policy is either that a nonprofit organization can or cannot own a restaurant with a pull-tabs. **Mr. Ackerman** pointed out that one of the reasons staff tried to parrot the language of the statute rather than just going with Alternative #1 is because Alternative #1 prohibits owning an interest in a commercial business license. The statute is broader than that. RCW 9.46.120 says that a nonprofit organization can't take any part in the management, operation, or ownership of one of these other activities. It's broader than just owning an interest. He explained that if all we talk about is an ownership interest -- and he couldn't conceive a practical circumstance under which this would happen, but it's in the statute -- presumably the Commission could have a nonprofit coming before them saying, "I'm not violating Alternative #1, we don't have any ownership interest in this. Yeah, we do some management and operation, but we don't own it." Mr. Ackerman believed that people who wanted to create a legal structure for themselves such that they did not own an interest in the license, but still got revenue from managing the game, could do so. The statute doesn't talk just in terms of an ownership interests, it talks in terms of participating in that second license.

**Commissioner Parker** appreciated Mr. Ackerman's clarification, and based on that, he proposed and made a motion that the Commissioners agree that Amendment #2 accomplishes more clearly what the Commission was trying to accomplish. **Commissioner Ludwig** seconded the motion.

Before proceeding, **Commissioner Ludwig** asked if a bona fide charitable and nonprofit organization that is

not licensed by the state of Washington or the Gambling Commission could invest in any commercial gambling activity. **Mr. Ackerman** responded yes, the statute only prohibits having two licenses of any kind. **Chair McLaughlin** thought licensees have two licenses when they have a pull-tab and a Bingo game. **Director Bishop** said they do, however, up until this point the Commission has not elected to limit that, the authority is there without the approval by the Commission, and so far, that has not been codified. Mr. Ackerman said the Commission has the authority to do so, and in the past they have allowed that to happen.

**Chair McLaughlin** called for further discussion on the motion and second. **Ms. Patjens** addressed the error in Amendment #2 and the intent to take out the word "not" on the third line (removing the double negative) and verified the motion would include the correction. **Commissioner Parker** and **Commissioner Ludwig** affirmed. Vote taken: Motion passed four to one with Commissioner Forrest voting no.

**Director Bishop** clarified that the proposed effective date on Subsection 9 of the rules summary indicates January 1, 2001. He asked the rule to become effective as soon as possible once it is passed. He noted there is an application before the Commission that needs to be resolved. **Chair McLaughlin** concurred and thought that if there was going to be a change in effective date, it should be done by the Commission. **Mr. Fleisher** said that action didn't have to be taken now because the vote just taken was for direction to staff as to what to bring forward next month. The Commissioners may address the effective date next month when they vote for final adoption.

3. **Surprise Punch board/Pull-tab Prizes:**

**WAC 230-30-070 – Control of prizes-restrictions-bonus prizes-displaying-procedures for awarding.**

**Amy Patjens** reported this rule was filed after the last Commission meeting. Pull-tab operators can either give away merchandise prizes or cash prizes. The rule deals with merchandise prizes that are actually wrapped up so the player does not know what is inside. This is different from a regular merchandise game where one would know they were playing for a jacket or for some other type of prize. The games have been allowed for years by policy. There haven't been any problems with them, but staff has questioned whether these games are, or are not allowed. If one reads the current rules, it could easily be concluded they were not allowed. Staff felt this should be clarified, not only for staff's benefit, but also for the licensees so that they know what the rules are.

**Ms. Patjens** explained that one of the conditions is that the actual cost paid by the licensee shall be printed on each prize so that a player knows the value of each prize. There was discussion at the study group session about having to actually post the cost on the outside of the prize. Staff feels that players should know the cost of the prize. The operators do get to mark up the prize by 50 percent, which is something that they've been allowed to do on merchandise games. For example, if the prize is listed as \$40, the operator will be able to mark that up to \$60 when they're calculating their prize pay-out.

**Commissioner Ludwig** responded the prize isn't that big of a surprise if the actual cost is printed. He believed that is why people play these games and take their chances, sometimes there's a good prize, and most of the time it was worth about what you paid for it. **Ms. Patjens** responded that staff felt like that they wanted players to have an idea on the value of the prize, just as they would know if they played for cash or a specific prize -- they know what they're getting. **Director Bishop** affirmed this has been an issue, and it has been questioned by staff because of player protection concerns. There have been no problems, but staff thought it would be a good thing to discuss. It helps clarify the agency's position for staff. **Chair McLaughlin** asked if it hasn't been a problem, and they've been doing it forever, why is it a problem. **Director Bishop** responded that even if the Commission's desire is not to have the actual cost paid by the licensee put on each prize, he would like the rest of this rule codified. It would clarify long term policy and the agency should operate by rule rather than policy. The rules would then be published in our newsletter so



all the licensees would know what they can and can't do with pull-tabs offering surprise prizes. **Mr. Fleisher** explained this is a problem for staff because the current rules say if you are going to have merchandise prizes, they have to be clearly displayed so the players can see what it is they're playing for. This rule, with or without the actual cost posted on the prize would make it clear that surprises are okay. Chair McLaughlin open the discussion for public testimony.

**Don Kaufman**, General Manager, Big Brothers/Big Sisters, Spokane, noted his organization doesn't operate this type of game, and he was not aware of many nonprofits that do. He believed that it would defeat the purpose of a surprise to put the value of the prize on the outside. He suggested a sign indicating there are 10 bags and the prizes range from \$10 to \$100 would be the desirable way to advertise, otherwise, you don't have a surprise. He asked why put the object in a bag and take away the surprise by putting the value on the outside. He explained that when someone buys a pull-tab, they don't know what's underneath the pull-tab -- it could be nothing or it could be \$200. Mr. Kaufman believed that as long as you know there's a minimum and a maximum value, then the surprise still exists. He suggested an alternative, something to the effect that the minimum and the maximum prize value are "x" and they be listed and shown to the public. **Commissioner Ludwig** asked if this wasn't just marketing. Mr. Kaufman agreed and he noted that perceived value is probably the most important thing in marketing. If the licensee can buy a piece of merchandise that looks like \$50 and it only costs \$25, then that's the best position to be in.

**Nick Peck**, Administrative Director, Silver Buckle Rodeo Club, Vancouver fully agreed that the surprise element vanishes if the true cost that the operator paid for the prize is printed on the prize. He fully appreciated the fact that this is a player-protection issue. Mr. Peck proposed the thought that if there is an urge to mark the prize with any figure at all, that it should be the marked up the 150 percent, or the cost plus 50 percent figure. That price could be on the prize itself, but not on the outside of the wrapping, and the operator perhaps could have available for public inspection on demand, a list of the prizes with their marked up value available. **Director Bishop** read the law into record regarding prizes: "All prizes available to be won must be described on an informational flare. All merchandise prizes must be on display within the immediate area of the premises in which any such punch board or pull-tab is located. Upon a winning number or symbol being drawn, a merchandise prize must be immediately removed from display and awarded to the winner. All references to cash or merchandise prizes with a value of \$20 must be removed immediately from the information flare when won. All or such omission shall be deemed a fraud for the purpose of this chapter." **Commissioner Forrest** asked if this is a Commission rule, or is it statutory. Director Bishop responded it is the statute. He affirmed the Commission has rules that have been implemented over the years, however, the particular rule we are modifying contains the control of the prizes issues. Absent from the rule is what happens when you put a prize in a box and no one knows what it is. The flare currently should denote if the value is over \$20, and that the value would be the mark up of the 150 percent of cost value.

**Chair McLaughlin** asked if the law couldn't be handled as Mr. Kaufman suggested. **Director Bishop** believed Mr. Kaufman's suggestion would not comply with the minimum prize pay-out requirement law; however, he would check with the Commission attorneys. **Commissioner Forrest** believed the Commission has a strong obligation to protect the public against systematic cheating. He said the Commission can go a point too far and he agreed with Commissioner Ludwig. Part of the reason about surprises is that you want to have some fun. Commissioner Forrest said that if there isn't some way to draft something that permits this, he'd rather go back and let it happen the way it has been. He believed that people who are participating in this are doing the same as when they go out and buy a ticket to the Washington State Lottery. He believed this is a legitimate entertainment activity and he didn't think the Commission should get so wrapped up in the rules that the activity gets outlawed.

**Director Bishop** suggested that Subsection 5(d)(i) be stricken. The rest of the rule clearly authorizes this type of activity, and the rest of the rules are the policy that has always been in effect. **Chair McLaughlin**

asked if there were any further comments from the public. **George Teeny** supported Director Bishop's suggestion. There were no other public comments and the public hearing was closed. **Commissioner Ludwig** asked if by removing 5(d)(i), if it would comply with the flare requirements to remove the items that are worth over \$20. Director Bishop explained that the rest of the rules take care of all of the requirements. The flare will identify the retail value, which is the marked up value. Chair McLaughlin reported this item would be discussed again next month.

**4. Reporting Changes in Management.**

**WAC 230-04-330** – *Change in management.*

**Ms. Patjens** reported this rule was filed after the last meeting. It covers when an organization needs to notify the Commission about a change in management. It applies to both commercial operators and nonprofits. The rule was first considered when staff was looking at streamlining Bingo rules several months ago and the rule was discussed at that time. In the past, any time there was a change in management the licensee had to separately notify the Commission. However, the Commission would already know because the Bingo manager is required to have a license. This rule is an attempt to prevent someone from having to notify us again of something that we were already aware of. A question was raised from a commercial operator during the study session about Subsection 1(d) where it states that a commercial operator has to let the Commission know about any position that makes management decisions directly affecting the operation of any licensed activity. The question related to floor supervisors (who are also referred to as pit bosses at times), who may be involved in management decisions, and are we really expecting a separate notice. Ms. Patjens explained that we are not expecting a separate notice, however, staff may make some changes to this section for clarification. Staff recommends further discussion.

**Chair McLaughlin** opened the topic for public testimony. There was none, she closed the public hearing and advised the issue will be scheduled for continued discussion next month.

**5. Promotional Contests of Chance.**

**WAC 230-46-010** – *Purpose*; **WAC 230-46-020** – *Definitions*; **WAC 230-46-025** – *Telephone charges – Valuable consideration*; **WAC 230-46-070** *Punch boards/pull-tab dispensing devices not to be used in promotional contests – Exception.*

**Ms. Patjens** reported this rules package was also filed after the last Commission meeting. There was a law passed during the last legislative session which streamlined what a person can be required to do to enter into a promotional contest of chance. These are contests that any business can operate, not just one of the Commission's licensees. Items 5A, 5C and 5D contain housekeeping changes. Item 5B previously containing definitions, is a repealer. Staff recommends further discussion; the rules will be up for final action next month.

**Chair McLaughlin** opened the topic for public testimony. There was none, she closed the public hearing and advised the issue will be scheduled for continued discussion next month.

**6. Credit Union Raffles:**

**WAC 230-02-161** – *Bona fide nonprofit organization defined.*

**Ms. Patjens** reported this was filed after the last meeting and is being proposed because of legislation passed during the last session. The law was passed to define credit unions as being bona fide nonprofit organizations for purposes of conducting unlicensed raffles. Unlicensed raffles are the raffles that don't exceed \$5,000 in gross receipts and the tickets are sold only to members. Item 6A simply defines a bona

fide nonprofit organization and adds credit unions to the list. Staff recommends further discussion.

**Chair McLaughlin** opened the topic for public testimony. There was none, she closed the public hearing and advised the issue will be scheduled for continued discussion next month.

### **Rules Up For Discussion and Possible Filing**

**7. Bingo Net Return Task Force Rules**

**WAC 230-04-260; WAC 230-08-255; WAC 230-20-059; WAC 230-20-062; WAC 230-30-052' WAC 230-50-010; WAC 230-02-362; WAC 230-02-364; WAC 230-02-366; WAC 230-02-530; WAC 230-02-535; WAC 230-02-540; WAC 230-20-540; and WAC 230-20-060;**

**Sherri Winslow**, Special Assistant, reported that the net return rules were presented as a result of the Bingo Task Force, which had its final session at this Commission meeting. All the rules have been discussed with the task force members and there is support for the package from the majority of the members. Members were encouraged to comment in support or with suggested alternatives. This is a large package and there were a few areas where alternatives were suggested. The rules reflect the majority support on those sections. Staff feels these rules should provide an effective regulatory program for the charitable/nonprofit market as it exists today. Changes are expected because of the market declines, and this may need to be revisited in the future. The Task Force supports recommending filing the rules. Ms. Winslow highlighted the changes:

7A – WAC 230–04-260 – Changes to this rule were recommended to reflect the new net return requirements under proposed WAC 230-20-059. The variance reference was also recommended for elimination because they wish to repeal the rule.

7B – WAC 230-08-255 – This is the bona fide charitable/nonprofit significant progress requirement. Changes were recommended to this section to make this rule easier for staff and licensees to test for significant progress. Actual percentages used to calculate significant progress remain the same. However, if an organization doesn't keep their gambling income separate from the non gambling income, additional testing of functional expenses are required. A change was made to recognize programs that are primarily operated with non-depreciable assets -- to make it easier for the nonprofit organizations.

7C – WAC 230-20-059 – Minimum net return required for Bingo games, prizes and expense limitations and then maximum gross receipts. A blended net return rate is proposed for the measurement periods beginning on or after December 31, 2000. This rate is calculated similar to the federal income tax rate. The effective rate required for organizations will be lower with the new blended rate compared to those previously required. One other change was made to allow rental income to be combined with other net income for the net return calculation.

7D – WAC 230-20-062 – Minimum net return Bingo game, sanctions. The sanctions rule is recommend for organizations with measurement periods on or after December 31, 2000. Currently, an organization that fails to meet their net return during a quarter is required to provide the Commission staff with a written plan of action to gain compliance within 45 days from quarter end. The proposed sanctions for not meeting a net return are to: limit an organizations pay-out percentage in the first year, reduce its operation one band level in the second year, and then to further reduce it two band levels in the third year. Organizations failing to have a positive cash flow for any two consecutive calendar quarters are deemed to be operating for gambling purposes and subject to administrative action. The last change related to licensees who have their Bingo gross receipts limited and who petition for relief; they are given new requirements on how that petition should be handled.

WAC 230-30-052 – Punch board pull-tabs operated by charities and nonprofits. The changes recommended make the rule consistent with other rules in the net return rules package.

WAC 230-50-010 – Criteria was included in this rule to add hearings for net return and significant progress issues. A hearings process for variances is also recommended.

Sections G through N rules are recommended for repeal since they are no longer needed in the proposed regulatory program. The majority of these rules are definitions that relate to the variance. The variance rule is now being recommended for repeal. Ms. Winslow noted the temporary moratorium within that section would no longer be necessary with the new blended rates.

**Commissioner Ludwig** questioned 7C which discusses the minimum return rates. He noted the license fee is different for each class and was curious why we are grouping Class A through E into one band. He asked why not charge one fee and change that to Class A. **Mr. Fleisher** affirmed staff discussed something similar -- it's a very logical suggestion. In fact, we are waiting to hear the outcome of the Supreme Court Decision on Issue I-695, because at the moment the Commission is restricted from changing any rates because of I-695. Once we see the results of that case, a recommendation may be coming forward.

**Commissioner Orr** made a motion seconded by **Commissioner Ludwig** to file the rules package on Bingo Net Return Task Force. **Chair McLaughlin** opened the topic for public testimony.

**Mr. Fleisher** addressed Commissioner Parker's request about staff looking at possible rule changes to deal with the reduction of class and what to do when someone is failing to meet net return. That is really Item 7D and he suggested this is a rule that the Commission might want to take a really close look at over the next month. This is the change that relates to the whole discussion we had about what we do when someone is not meeting their net return and is running a negative cash flow.

**Robert Ransom**, President, Cascade Bingo, pointed out that not all Bingo parlors participated in the Task Force, and that there are some that disagree with the results. His concern is that this is still too high. He noted that last quarter, of the 40 top Bingo operators, 31 are not in compliance and 6 had negative cash flows. The statistics used to help set the net returns were established during better times. There was discussion about using something like a 2 or 3 percent positive cash flow as a minimum. He believed something like that is more reasonable and easier to follow. Mr. Ransom noted the problem is that there are going to be quarters like last quarter when a lot of even the top 40 are going to be in trouble -- he believed the standards are too tight. He acknowledged that the Washington Civic Gambling Association in total approves, but, he wanted to point out that not everyone is in agreement. He predicted that if we do this and troubled times continue, 20 of the top 40 operators may be out of existence in two years.

**Chair McLaughlin** asked Ms. Winslow if that was what she meant when she said the Commission will probably be looking at these again. **Ms. Winslow** affirmed. Chair McLaughlin called for further testimony, there were no further comments, and she closed the public testimony. She called for further discussion on the motion to file.

**Commissioner Forrest** supported filing the package. He commented that the industry should know their problems better than he does. Commissioner Forrest personally believed one or two levels of positive cash flow would be adequate. He believed that at some point, the Commission should basically say that they want so many dollars to go to a charitable purpose -- if you're going to be in business, and if not -- you're going to have to close up until the Legislature sees fit, or raise funds in other ways. Commissioner Forrest said that maybe this is the best we can do now, but he didn't think it was adequate. **Commissioner**

**Parker** said he recognizes that he hasn't had that much involvement on this issue, but this does seem to be common sense conclusion. It's not a reflection on the charities or what they are trying to do. It's just a matter of public policy. If people are operating gambling enterprises and the only monies that are generated go back to support the gambling enterprises, then how are they to be distinguished from anybody else?

**Chair McLaughlin** called for the vote. Vote taken; motion passed with five aye votes. **Chair McLaughlin** called for a recess at 11:25 a.m., and reconvened the meeting at 11:35 a.m.

11. **New Marketing Schemes for Pull-tabs**

**WAC 230-30-033** *Hold pull-tab series – Definitions – Restrictions.*

**WAC 230-30-036** *Strip pull-tab series – Definitions – Restrictions.*

**Chair McLaughlin** said she didn't like the use of the word "schemes". **Commissioner Forrest** suggested replacing the word "schemes" with the word "strategies" and Ms. Winslow concurred.

**Sherri Winslow** reported that the whole ticket and strip ticket pull-tab series are part of the new market opportunities that came out of the Task Force. The whole ticket series is a game with a predetermined number of pull-tabs allowing a player an opportunity to advance to another round with a secondary element of chance. It also includes instant winners. In the second element of chance there can be two different methods of play. One method is tied to a Bingo game and the other is tied to a bonus number on the flare. All other requirements of the whole series are similar to the existing pull-tab rule. Examples of the whole ticket series were passed out.

WAC 230-30-036 applies to strip tickets, which is a series of pull-tabs sold in strips. There are two to five series that are combined on one flare to make up a set, and that is the strip that they observe on the side of one flare. The strip ticket requirements outlined in the rule fall in line with other pull-tab requirements in the rules manual. It's played much the same as other pull-tabs except you are playing a strip of pull-tabs at one time. Staff recommend filing the rule.

**Commissioner Orr** made a motion seconded by **Commissioner Ludwig** to file the rules package.

**Director Bishop** addressed Subsection 4C of the rule, noting it says the maximum price per pull-tab is \$1.00. He believed it should read that the maximum price per strip of pull-tabs is \$1.00. **Ms. Cass-Healy** affirmed.

**Chair McLaughlin** asked if the motion and second could stand as amended. The motion makers affirmed. She opened the discussion for public testimony. There were no comments and the public testimony was closed. Vote taken; motion carried with five aye votes.

12. **House Rules:**

**WAC 230-20-010**

**Amy Patjens** noted that examples of a Bingo game called "Fast Pick" or "Pick Eight Games" were distributed. When one enters into a Bingo operation, they can write down eight numbers they think are going to be the first ones picked. The first person to get those first eight numbers that he or she chose would win the prize.

Earlier this year there were two situations where Bingo operators had house rules saying they would not pay the Bingo if the person had marked through the number, even if they are still readable. Attachment 1 demonstrated an example where the numbers five and seven were marked through even though you could still read them. On the second example it is handwritten, and the number 46 has been circled and the six has been written through. In both instances the Bingo operators did not want to pay the prizes because technically the house rules had been violated. These were brought to the Director's attention. Staff felt this

was an unfair result when the bingo had been valid. The rule simply states that if the Bingo is valid, the operator must pay the prize for the game and it also clarifies that disputes such as this will be resolved in favor of the player, again with a valid bingo. Staff recommends filing of this rule for further discussion.

**Chair McLaughlin** verified that all we are saying is that if you can read the number, you must be paid. **Ms. Patjens** affirmed, and if it is a valid bingo, the disputes are going to be decided in the player's favor versus in the house's favor. In the sample case the house was correct. The house's rules had been violated because their house rules said if you mark through the number, they will not pay them. However, staff felt that if they marked through the numbers and it can still be read, it is fair to pay them. **Chair McLaughlin** called for a motion to file.

**Commissioner Forrest** made a motion seconded by **Commissioner Ludwig** to file the rules package for further discussion. **Chair McLaughlin** opened the topic for public testimony. There was no testimony. The public testimony was closed. Vote take: motion passed with five aye votes.

13. **Other Business/General Discussion/ Comments from the Public**

**Chair McLaughlin** called for any other comments or business item from the public.

**Don Kaufman**, Big Brothers/Big Sisters, Spokane, commented on 2A of the packet -- his understanding is that the Commission voted to file Amendment #2. As he interprets Amendment #2, if any nonprofit in the state that currently does not have a gambling license, could apply for a card room license. He said that doesn't make a lot of sense, because most of them have buildings that sit for three days a week, and then gets used, and then sits for four days a week unused. They also have staff with a lot of expertise in gambling. The Commission is saying that those operators who have staff with expertise can't be in the card room business, but those who don't have any staff with expertise in gambling could be in the card room business. The other issue would be those people who are now currently leasing to a card room, they may consider the opportunity to drop their Bingo license, start their own card room and then lease their facility to another nonprofit to run Bingo under Amendment #1. That looks like an opportunity that now exists that didn't exist previously. Mr. Kaufman offered his comments as food for thought.

**Commissioner Parker** said that interpretation did not sound right to him. He asked if staff could respond to his interpretation of Amendment #2. He thought Amendment #1 is a mutually exclusive idea. **Mr. Ackerman** responded that Mr. Kaufman's comments are essentially the same ones that Commissioner Ludwig made at the conclusion of the discussion -- which is that a nonprofit organization that doesn't have a gambling license and isn't regulated by this Commission certainly can have an ownership, management or operational interest in a commercial gambling license because their interest is only in one license. That doesn't run afoul of the statute. Currently that is a possibility. The second issue goes to what the statutory authority of the Commission is; and that statute says you can't have an interest in more than two licenses unless allowed by the Commission. A nonprofit that didn't have a gambling license issued by the Commission would, as a general matter of corporation and nonprofit law, be allowed to have an interest. However, if there is a nonprofit that does something like that, they may have issues with the IRS -- they may put their 501(c)(3) determination in jeopardy. However, those are things beyond the scope of the Commission's ability to regulate.

**Director Bishop** agreed with Mr. Ackerman and said that one of the house-banked card room approvals yesterday, in fact has a landlord that is a charitable/nonprofit organization. There's no connection between the two, but the landlord was a charitable/nonprofit organization. **Chair McLaughlin** said if she remembers Mr. Beadle speaking to that, he had checked with the IRS and that wasn't going to put their 501(c)(3) in jeopardy. **Director Bishop** said they are basically allowed to do a lot. There are some restrictions as to how far they can get into the rental business. Under state law, they're absolutely allowed to engage in any type of activity. Director Bishop explained that what they were talking about with this rule is the fact that

the only clear authority (other than going to whatever's deemed to be in the public interests), to limit this activity was under Section 9.46.120. That gives the Commission the authority to approve or deny involvement in different gambling operations. Therefore, if a licensee was not currently involved in any licensed gambling activity, that section does not apply.

**Mr. Ransom** addressed Amendment #2 and pointed out that his organization was the one that created a separate corporation with a restaurant and then filed for a card room. The Commission is proposing to eliminate the opportunity to have the card room. But now, his organization is going even further, and they have created their cafeteria. They made it a restaurant -- trying to make it self supporting so they could run it seven days a week and sell pull-tabs. Now the Commission is saying with Amendment #2, they can't even run their restaurant as a separate operation and sell pull-tabs. Mr. Ransom said this has a pretty broad impact. **Chair McLaughlin** agreed.

**Director Bishop** said there is a flaw; he believed it was intended to say "commercial". He affirmed that in fact, the way this rule is written, it could certainly be interpreted to say that a Bingo game cannot have punch board and pull-tabs, or raffle licenses, or anything else -- so that is something staff definitely wants to clear up. He noted for informational purposes that there's no prohibition right now on Mr. Ransom operating his snack bar and having pull-tabs seven days a week under his charitable/nonprofit license, because there are no operating restrictions on punch board and pull-tabs like there is on Bingo. **Mr. Ransom** commented that they will have to give up their food services corporation and go back to the nonprofit status. Director Bishop said that is a separate issue, and confirmed their organization is allowed to operate their pull-tabs seven days a week, 24 hours a day.

**Commissioner Forrest** asked what purpose would be served by having him collapse the restaurant. He said he didn't understand who or what his colleagues think they're protecting. This is a commercial restaurant, people go in and buy pull-tabs, and so what if it's owned by a nonprofit or charitable corporation?

**Commissioner Orr** responded that when this whole debate was started, part of what was discussed was; a) an expansion of gambling, and b) a deception, whether it's naively or intentionally. That was the emphasis of the whole debate. He believed the ultimate goal was to not deceive the public and not hurt the business. **Commissioner Forrest** said that if the public went to a nonprofit hall, and in fact some private corporation was getting the profits, he believed that would be a bad state of affairs. The Commission shouldn't sanction that. In the reverse, if one goes to what looks like a restaurant and buys dinner, the fact that the profit goes to a nonprofit hall is a plus. Commissioner Orr said that was exactly right, and so therein lies the debate.

**Commissioner Parker** explained that there was also a distinction between how the law should apply to charities versus how it should apply to everyone else. As he understands that, some people think that if people can own card rooms then charities should be able to own card rooms, and that essentially, we shouldn't make a distinction between the two. Commissioner Parker believed it's a philosophical difference. If that's where the Commission wants to start from, then this becomes a good reason to go back to the drawing board and take all of this off the table. He noted that he happens to come from the position that there is a distinction and it's an important distinction that exists as a basic premise of the law as it applies here, and we're just trying to find a way to interpret it in such a way that it is workable without doing harm. **Chair McLaughlin** said the Legislature was very clear that there was a distinction and suggested that any change may have to be made by the Legislature.

#### 11. Adjournment:

With no further business, a motion for adjournment prevailed at 11:35 a.m.

*Minutes submitted to the Commission for approval.*

Shirley A. Corbett  
Executive Assistant